

Message Text

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ACTION ARA-20

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FM AMEMBASSY SAN JOSE

TO SECSTATE WASHDC 7795

LIMITED OFFICIAL USE SAN JOSE 3056

E.O. 11652: N/A

TAGS: EIND, CS

SUBJ: DISCRIMINATORY CONSTRUCTION INDUSTRY
LEGISLATION

1. SUMMARY. THE EMBASSY HAS BECOME AWARE OF RECENTLY
PASSED LEGISLATION WHICH WOULD APPEAR TO DISCRIMINATE IN
FAVOR OF NATIONAL AS OPPOSED TO FOREIGN BIDDERS ON GOCR CON-
STRUCTION PROJECTS BY ALLOWING FOR AN ADJUSTMENT IN CONTRACTED
PRICE IF ACTUAL CONSTRUCTION COSTS CHANGE OVER TIME.
END SUMMARY

2. THE LEGISLATION WHICH TAKES THE FORM OF TWO BASIC LAWS
AND ONE SET OF IMPLEMENTING REGULATIONS, PROVIDES FOR THE
UPWARD AND DOWNWARD READJUSTMENT OF AMOUNTS CONTRACTED FOR
CONSTRUCTION OF A WORK WHEN ACTUAL CONSTRUCTION COSTS CHANGE.
NATIONAL CONSTRUCTION FIRMS, BIDDING ON STATE AND AUTONOMOUS OR
SEMIAUTONOMOUS GOVERNMENT AGENCY CONTRACTS ARE COVERED BY THIS LAW.
A NATIONAL FIRM IS DEFINED AS ONE IN WHICH 70 PERCENT OF THE
CAPITAL BELONGS TO COSTA RICANS. SUCH A FIRM MUST HAVE
BEEN ESTABLISHED AS A CONSTRUCTION FIRM FOR AT LEAST
TWO YEARS.

3. PROVISION IS MADE FOR APPLYING THIS PREFERENTIAL LEGISLATION
TO FOREIGN CONSTRUCTION FIRMS ALSO IF, PREVIOUS TO THE PRESENT-
ATION OF BIDS, THE STATE AND ITS INSTITUTIONS DETERMINE
THAT NATIONAL CONSTRUCTION FIRMS IN THE COUNTRY ARE
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NOT SUFFICIENTLY ABLE TO EXECUTE THE WORK IN QUESTION.

4. DESPITE WHAT THE EMBASSY READS AS AN INTENT TO EXCLUDE FOREIGN FIRMS FROM THE BENEFITS OF THIS LEGISLATION, ONE OF THE BASIC LAWS CONTAIN A CLAUSE WHICH READS "THE CLAUSES OF THIS LAW AND ANY COMPLEMENTARY LAWS WILL BE APPLIED IN A MANNER WHICH WILL NOT BE PREJUDICIAL TO CONTENTS OF CONTRACTS MADE WITH INTERNATIONAL CREDIT INSTITUTIONS." THE EMBASSY IS UNCERTAIN WHETHER THIS MEANS THAT IN THE CASE OF A PROJECT RECEIVING INTERNATIONAL FUNDING THIS LAW WOULD APPLY TO ALL BIDDERS REGARDLESS OF NATIONALITY. CONVERSELY IT MIGHT MEAN THAT IT WOUL NOT APPLY TO ANY BIDDERS. WE HAVE BEEN UNABLE TO IDENTIFY ANY FURTHER CLAUSES IN THE LIGISLATION WHICH WOULD HELP TO CLARIFY THIS QUESTION.

5. WE HAVE BEEN INFORMED THAT COPIES OF THE LIGISLATION HAVE BEEN SUBMITTED TO THE IDB FOR STUDY AND THAT THE IDB'S PRELIMINARY REACTION IS ONE OF NON CONCERN. THE TRANSITORY CLAUSES OF THE LEGISLATION SEEM TO EXTEND COVERAGE TO ALL CONTRACTS CURRENTLY UNDERWAY OR WHICH HAVE ALREADY BEEN AWARDED, REGARDLESS OF THE CONTRACTOR'S NATIONALITY.

6. ACTION REQUESTED. COPIES OF THE TWO BASIC LAWS AND THE IMPLEMENTING REGULATIONS ARE BEING POUCHED UNDER TRANSMITTAL SLIP TO ARA/CEN. THE EMBASSY WOULD APPRECIATE ANY GUIDANCE WHICH THE DEPARTMENT CAN PROVIDE ON THE INTERPRETATION OF THIS LEGISLATION AND ANY SUGGESTIONS FOR APPROPRIATE COURSES OF ACTION WHICH SHOULD BE PURSUED BY THE EMBASSY IN RESPONSE TO THIS LEGISLATION. THE CHARGE PLANS TO CALL ON THE MINISTER OF PUBLIC WORKS WITHIN THE NEXT FEW WEEKS TO DISCUSS ANOTHER MATTER AND COULD EASILY RAISE THE SUBJECT OF THIS LEGISLATION AT THAT TIME.

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